

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

ELECTRONIC PRIVACY INFORMATION CENTER
1519 New Hampshire Avenue, NW
Washington, D.C. 20036

DOE 1

Plaintiffs,

v.

Case No. 1:25-cv-00255

U.S. OFFICE OF PERSONNEL MANAGEMENT
1900 E Street NW
Washington, DC 20415

CHARLES EZELL, in his official capacity as Acting
Director of the Office of Personnel Management
1900 E Street NW
Washington, D.C. 20415 U.S.

DEPARTMENT OF THE TREASURY
1500 Pennsylvania Avenue NW
Washington, DC 20220

SCOTT BESSENT, in his official capacity as Secretary
of the Treasury
1500 Pennsylvania Avenue NW
Washington, D.C. 20220

U.S. DIGITAL SERVICE (U.S. DOGE SERVICE)
736 Jackson Place NW
Washington, D.C. 20503

ACTING U.S. DOGE SERVICE ADMINISTRATOR
736 Jackson Place NW
Washington, D.C. 20503

U.S. DOGE SERVICE TEMPORARY
ORGANIZATION
736 Jackson Place
Washington, D.C. 20503

Defendants.

NOTICE OF SUPPLEMENTAL AUTHORITY

During the February 21, 2025 hearing on Plaintiffs' Motion for a Temporary Restraining Order in this matter, *see* Minute Entry, ECF No. 32, the Court asked if Plaintiffs could identify case law in which the asserted harm caused by unlawful access to personal information was found to be sufficiently close to the common law harm of intrusion upon seclusion to support Article III standing. Plaintiffs file this Notice to make the Court aware of two such cases discovered after the hearing.

In *Nayab v. Capital One Bank, N.A.*, 942 F.3d 480 (9th Cir. 2019), in considering “whether a consumer suffers a concrete Article III injury in fact when a third-party obtains her credit report for a purpose not authorized by the [Fair Credit Reporting Act],” *id.* at 487, the Ninth Circuit determined that the resulting “release of highly personal information . . . is the same harm that forms the basis for the tort of intrusion upon seclusion.” *Id.* at 492. The Southern District of California later held that, after *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021), “*Nayab* remains precedential,” *Rendon v. Cherry Creek Mortg., LLC*, No. 22-CV-01194-DMS-MSB, 2022 WL 17824003 at *3 (S.D. Cal. Dec. 20, 2022), and concluded that the “alleged harm suffered by Plaintiff” from an unauthorized inquiry on Plaintiff’s credit file was “sufficient ‘in kind’ to the harm suffered by intrusion upon seclusion” to establish a concrete injury in fact, and thus Article III standing. *Id.* at *4.

As noted in Plaintiffs’ Reply in Support of Motion for Temporary Restraining Order, ECF No. 20, at 6 and 8, in *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021), amid the Court’s discussion of historical common law harms that may provide a basis for Article III standing to pursue other closely related claims, the Court specifically identified intrusion upon seclusion as one such “intangible” but “concrete” harm. *Id.* at 425; *see also*

Eichenberger v. ESPN, Inc., 876 F.3d 979, 983–84 (9th Cir. 2017) (holding, pre-*TransUnion*, that a Video Privacy Protection Act disclosure violation was related to intrusion upon seclusion, noting that neither required “additional consequences to be actionable”); *Perry v. Cable News Network, Inc.*, 854 F.3d 1336, 1340–41 (11th Cir. 2017) (same).

Dated: February 21, 2025

Respectfully submitted,

/s/ Matthew B. Kaplan

Matthew B. Kaplan, VSB # 51027
THE KAPLAN LAW FIRM
1100 N. Glebe Rd., Suite 1010
Arlington, VA 22201
Telephone: (703) 665-9529
mbkaplan@thekaplanlawfirm.com

Alan Butler*
EPIC Executive Director
John L. Davisson*
EPIC Director of Litigation
ELECTRONIC PRIVACY
INFORMATION CENTER
1519 New Hampshire Ave, N.W.
Washington, D.C. 20036
(202) 483-1140 (telephone)
(202) 483-1248 (fax)

Mark B. Samburg*
Orlando Economos***
Aman T. George*
Robin F. Thurston*
Skye Perryman**
DEMOCRACY FORWARD FOUNDATION
P.O. Box 34553
Washington, D.C. 20043
Telephone: (202) 448-9090
Fax: (202) 796-4426
msamburg@democracyforward.org
oeconomos@democracyforward.org
ageorge@democracyforward.org
rthurston@democracyforward.org
sperryman@democracyforward.org

*pro hac vice

** pro hac vice *application forthcoming*

*** pro hac vice *application pending*

Counsel for Plaintiffs